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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 TOBIN E. FUSS and ANGELA FUSS,

Case No.: 3:19-cv-00282-MMD-CBC

9 Plaintiffs,

ANSWER TO COMPLAINT

10 vs.

11 SELENE FINANCE LP, a foreign limited
12 partnership and Does I through X, inclusive,

13 Defendants.
14

15 Defendant Selene Finance LP (hereafter “Defendant”), by and through its attorney of
16 record, hereby files the following Answer to Plaintiffs Tobin E. Fuss and Angela Fuss’
17 (hereafter the “Plaintiffs”) Complaint for Damages, as follows:

18 **PARTIES, JURISDICTION, AND VENUE**

19 1. Defendant admits the allegations in paragraph 1 of the Complaint.
20 2. Defendant admits the allegations in paragraph 2 of the Complaint.
21 3. Defendant admits the allegations in paragraph 3 of the Complaint.
22 4. Defendant does not possess enough information to admit or deny the allegation
23 in paragraph 4 of the Complaint and thus denies said allegations.

24 5. Defendant does not possess enough information to admit or deny the allegation
25 in paragraph 5 of the Complaint and thus denies said allegations.

26 **GENERAL ALLEGATIONS**

27 6. Defendant admits the allegations in paragraph 6 of the Complaint.
28 7. Defendant does not possess enough information to admit or deny the allegation
in paragraph 7 of the Complaint and thus denies said allegations.

1 8. Defendant does not possess enough information to admit or deny the allegation
2 in paragraph 8 of the Complaint and thus denies said allegations.

3 9. Defendant does not possess enough information to admit or deny the allegation
4 in paragraph 9 of the Complaint and thus denies said allegations.

5 10. Defendant does not possess enough information to admit or deny the allegation
6 in paragraph 10 of the Complaint and thus denies said allegations.

7 11. Defendant does not possess enough information to admit or deny the allegation
8 in paragraph 11 of the Complaint and thus denies said allegations.

9 12. Defendant does not possess enough information to admit or deny the allegation
10 in paragraph 12 of the Complaint and thus denies said allegations.

11 13. Defendant does not possess enough information to admit or deny the allegation
12 in paragraph 13 of the Complaint and thus denies said allegations.

13 14. Defendant does not possess enough information to admit or deny the allegation
14 in paragraph 14 of the Complaint and thus denies said allegations.

15 15. Defendant does not possess enough information to admit or deny the allegation
16 in paragraph 15 of the Complaint and thus denies said allegations.

17 16. Defendant does not possess enough information to admit or deny the allegation
18 in paragraph 16 of the Complaint and thus denies said allegations.

19 17. Defendant does not possess enough information to admit or deny the allegation
20 in paragraph 17 of the Complaint and thus denies said allegations.

21 18. Defendant does not possess enough information to admit or deny the allegation
22 in paragraph 18 of the Complaint and thus denies said allegations.

23 19. Defendant does not possess enough information to admit or deny the allegation
24 in paragraph 19 of the Complaint and thus denies said allegations.

25 20. Defendant does not possess enough information to admit or deny the allegation
26 in paragraph 20 of the Complaint and thus denies said allegations.

27 21. Defendant admits the allegations in paragraph 21 of the Complaint.

28 22. Defendant does not possess enough information to admit or deny the allegation
in paragraph 22 of the Complaint and thus denies said allegations.

 23. Defendant does not possess enough information to admit or deny the allegation
in paragraph 23 of the Complaint and thus denies said allegations.

1 24. Defendant does not possess enough information to admit or deny the allegation
2 in paragraph 24 of the Complaint and thus denies said allegations.

3 25. Defendant does not possess enough information to admit or deny the allegation
4 in paragraph 25 of the Complaint and thus denies said allegations.

5 26. Defendant does not possess enough information to admit or deny the allegation
6 in paragraph 26 of the Complaint and thus denies said allegations.

7 27. Responding to paragraph 27, Defendant denies a billing error. Regarding the
8 remaining allegations in paragraph 27. Defendant does not possess enough information to admit
9 or deny the allegation in paragraph 27 of the Complaint and thus denies said allegations.

10 28. Defendant does not possess enough information to admit or deny the allegation
11 in paragraph 28 of the Complaint and thus denies said allegations.

12 29. Defendant denies the allegations in paragraph 29 of the Complaint.

13 30. Defendant does not possess enough information to admit or deny the allegation
14 in paragraph 30 of the Complaint and thus denies said allegations.

15 31. Defendant does not possess enough information to admit or deny the allegation
16 in paragraph 31 of the Complaint and thus denies said allegations.

17 32. Defendant denies the allegations in paragraph 32 of the Complaint.

18 33. Defendant does not possess enough information to admit or deny the allegation
19 in paragraph 33 of the Complaint and thus denies said allegations.

20 34. Defendant denies the allegations in paragraph 34 of the Complaint.

21 35. Defendant does not possess enough information to admit or deny the allegation
22 in paragraph 35 of the Complaint and thus denies said allegations.

23 **FIRST CLAIM FOR RELIEF**

24 **Breach of Contract**

25 36. Answering paragraph 36 of the Complaint, Defendant hereby repeats, realleges
26 and incorporates each of its admissions, denials, or other responses to all the paragraphs
27 referenced hereinabove as if set forth at length and in full.

28 37. Defendant does not possess enough information to admit or deny the allegation
in paragraph 37 of the Complaint and thus denies said allegations.

 38. Defendant does not possess enough information to admit or deny the allegation
in paragraph 38 of the Complaint and thus denies said allegations.

1 39. Defendant does not possess enough information to admit or deny the allegation
2 in paragraph 39 of the Complaint and thus denies said allegations.

3 40. Defendant does not possess enough information to admit or deny the allegation
4 in paragraph 40 of the Complaint and thus denies said allegations.

5 41. Defendant does not possess enough information to admit or deny the allegation
6 in paragraph 41 of the Complaint and thus denies said allegations.

7 42. Defendant does not possess enough information to admit or deny the allegation
8 in paragraph 42 of the Complaint and thus denies said allegations.

9 43. Defendant does not possess enough information to admit or deny the allegation
10 in paragraph 43 of the Complaint and thus denies said allegations.

11 44. Defendant does not possess enough information to admit or deny the allegation
12 in paragraph 44 of the Complaint and thus denies said allegations.

13 45. Defendant does not possess enough information to admit or deny the allegation
14 in paragraph 45 of the Complaint and thus denies said allegations.

15 46. Defendant admits the allegations in paragraph 46 of the Complaint.

16 47. Defendant denies the allegations in paragraph 47 of the Complaint.

17 48. Defendant does not possess enough information to admit or deny the allegation
18 in paragraph 48 of the Complaint and thus denies said allegations.

19 49. Defendant denies the allegations in paragraph 49 of the Complaint.

20 50. Defendant does not possess enough information to admit or deny the allegation
21 in paragraph 50 of the Complaint and thus denies said allegations.

22 51. Defendant denies the allegations in paragraph 51 of the Complaint.

23 52. Defendant does not possess enough information to admit or deny the allegation
24 in paragraph 52 of the Complaint and thus denies said allegations.

25 53. Defendant does not possess enough information to admit or deny the allegation
26 in paragraph 53 of the Complaint and thus denies said allegations.

27 54. Defendant denies the allegations in paragraph 54 of the Complaint.

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SECOND CLAIM FOR RELIEF

Breach of the Covenant of Good Faith and Fair Dealing

55. Answering paragraph 55 of the Complaint, Defendant hereby repeats, realleges and incorporates each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth at length and in full.

56. Defendant does not possess enough information to admit or deny the allegation in paragraph 56 of the Complaint and thus denies said allegations.

57. Defendant does not possess enough information to admit or deny the allegation in paragraph 57 of the Complaint and thus denies said allegations.

58. Defendant does not possess enough information to admit or deny the allegation in paragraph 58 of the Complaint and thus denies said allegations.

59. Defendant denies the allegations in paragraph 59 of the Complaint.

60. Defendant denies the allegations in paragraph 60 of the Complaint.

THIRD CLAIM FOR RELIEF

Tortious Breach of the Covenant of Good Faith and Fair Dealing

61. Answering paragraph 61 of the Complaint, Defendant hereby repeats, realleges and incorporates each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth at length and in full.

62. Defendant denies the allegations in paragraph 62 of the Complaint.

63. Defendant denies the allegations in paragraph 63 of the Complaint.

64. Defendant denies the allegations in paragraph 64 of the Complaint.

65. Defendant denies the allegations in paragraph 65 of the Complaint.

66. Defendant denies the allegations in paragraph 66 of the Complaint.

67. Defendant denies the allegations in paragraph 67 of the Complaint.

FOURTH CLAIM FOR RELIEF

Unfair and Deceptive Practices (Consumer Fraud)

68. Answering paragraph 68 of the Complaint, Defendant hereby repeats, realleges and incorporates each of its admissions, denials, or other responses to all the paragraphs referenced hereinabove as if set forth at length and in full.

69. Paragraph 69 does not require an admission or denial.

70. Paragraph 70 does not require an admission or denial.

1 71. Paragraph 71 does not require an admission or denial.

2 72. Paragraph 72 does not require an admission or denial.

3 73. Defendant denies the allegations in paragraph 73 of the Complaint.

4 74. Defendant denies the allegations in paragraph 74 of the Complaint.

5 75. Paragraph 75 does not require an admission or denial.

6 76. Defendant denies the allegations in paragraph 76 of the Complaint.

7 77. Defendant denies the allegations in paragraph 77 of the Complaint.

8 **FIFTH CLAIM FOR RELIEF**

9 **Attorney Fees as Special Damages**

10 78. Answering paragraph 78 of the Complaint, Defendant hereby repeats, realleges
and incorporates each of its admissions, denials, or other responses to all the paragraphs
11 referenced hereinabove as if set forth at length and in full.

12 79. Defendant denies the allegations in paragraph 79 (erroneously named paragraph
13 74) of the Complaint.

14 80. Defendant denies the allegations in paragraph 80 (erroneously named paragraph
15 75) of the Complaint.

16 81. Defendant denies the allegations in paragraph 81 (erroneously named paragraph
17 76) of the Complaint.

18 82. Defendant denies the allegations in paragraph 82 (erroneously named paragraph
19 77) of the Complaint.

20 **SIXTH CLAIM FOR RELIEF**

21 **Real Estate Settlement Procedures Act**

22 83. Answering paragraph 83 (erroneously named paragraph 78) of the Complaint,
Defendant hereby repeats, realleges and incorporates each of its admissions, denials, or other
23 responses to all the paragraphs referenced hereinabove as if set forth at length and in full.

24 84. Defendant does not possess enough information to admit or deny the allegation
25 in paragraph 84 (erroneously named paragraph 79) of the Complaint and thus denies said
allegations.

26 85. Defendant does not possess enough information to admit or deny the allegation
27 in paragraph 85 (erroneously named paragraph 80) of the Complaint and thus denies said
28 allegations.

1 86. Defendant does not possess enough information to admit or deny the allegation
2 in paragraph 86 (erroneously named paragraph 81) of the Complaint and thus denies said
3 allegations.

4 87. Defendant does not possess enough information to admit or deny the allegation
5 in paragraph 87 (erroneously named paragraph 82) of the Complaint and thus denies said
6 allegations.

7 88. Defendant does not possess enough information to admit or deny the allegation
8 in paragraph 88 (erroneously named paragraph 83) of the Complaint and thus denies said
9 allegations.

10 89. Defendant does not possess enough information to admit or deny the allegation
11 in paragraph 89 (erroneously named paragraph 84) of the Complaint and thus denies said
12 allegations.

13 90. Defendant does not possess enough information to admit or deny the allegation
14 in paragraph 90 (erroneously named paragraph 85) of the Complaint and thus denies said
15 allegations.

16 91. Defendant does not possess enough information to admit or deny the allegation
17 in paragraph 91 (erroneously named paragraph 86) of the Complaint and thus denies said
18 allegations.

19 92. Defendant does not possess enough information to admit or deny the allegation
20 in paragraph 92 (erroneously named paragraph 87) of the Complaint and thus denies said
21 allegations.

22 93. Defendant does not possess enough information to admit or deny the allegation
23 in paragraph 93 (erroneously named paragraph 88) of the Complaint and thus denies said
24 allegations.

25 94. Defendant does not possess enough information to admit or deny the allegation
26 in paragraph 94 (erroneously named paragraph 89) of the Complaint and thus denies said
27 allegations.

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**ATTEMPTS TO OBTAIN INFORMATION AND HAVE SELENE
CORRECT ERRORS**

95. Defendant does not possess enough information to admit or deny the allegation in paragraph 95 (erroneously named paragraph 90) of the Complaint and thus denies said allegations.

96. Defendant does not possess enough information to admit or deny the allegation in paragraph 96 (erroneously named paragraph 91) of the Complaint and thus denies said allegations.

97. Defendant does not possess enough information to admit or deny the allegation in paragraph 97 (erroneously named paragraph 92) of the Complaint and thus denies said allegations.

98. Defendant does not possess enough information to admit or deny the allegation in paragraph 98 (erroneously named paragraph 93) of the Complaint and thus denies said allegations.

99. Defendant denies the allegations in paragraph 99 (erroneously named as paragraph 94). .

100. Defendant does not possess enough information to admit or deny the allegation in paragraph 100 (erroneously named paragraph 95) of the Complaint and thus denies said allegations.

101. Defendant does not possess enough information to admit or deny the allegation in paragraph 101 (erroneously named paragraph 96) of the Complaint and thus denies said allegations.

102. Defendant does not possess enough information to admit or deny the allegation in paragraph 102 (erroneously named paragraph 97) of the Complaint and thus denies said allegations.

103. Defendant denies the allegations in paragraph 103 (erroneously named paragraph 98).

104. Defendant does not possess enough information to admit or deny the allegation in paragraph 104 (erroneously named paragraph 99) of the Complaint and thus denies said allegations.

1 105. Defendant does not possess enough information to admit or deny the allegation
2 in paragraph 105 (erroneously named paragraph 100) of the Complaint and thus denies said
3 allegations.

4 106. Defendant does not possess enough information to admit or deny the allegation
5 in paragraph 106 (erroneously named paragraph 101) of the Complaint and thus denies said
6 allegations.

7 107. Defendant does not possess enough information to admit or deny the allegation
8 in paragraph 107 (erroneously named paragraph 102) of the Complaint and thus denies said
9 allegations.

10 108. Defendant does not possess enough information to admit or deny the allegation
11 in paragraph 108 (erroneously named paragraph 103) of the Complaint and thus denies said
12 allegations.

13 109. Defendant does not possess enough information to admit or deny the allegation
14 in paragraph 109 (erroneously named paragraph 104) of the Complaint and thus denies said
15 allegations.

16 110. Defendant does not possess enough information to admit or deny the allegation
17 in paragraph 110 (erroneously named paragraph 105) of the Complaint and thus denies said
18 allegations.

19 111. Defendant does not possess enough information to admit or deny the allegation
20 in paragraph 111 (erroneously named paragraph 106) of the Complaint and thus denies said
21 allegations.

22 112. Defendant does not possess enough information to admit or deny the allegation
23 in paragraph 112 (erroneously named paragraph 107) of the Complaint and thus denies said
24 allegations.

25 113. Defendant does not possess enough information to admit or deny the allegation
26 in paragraph 113 (erroneously named paragraph 108) of the Complaint and thus denies said
27 allegations.

28 114. Defendant does not possess enough information to admit or deny the allegation
in paragraph 114 (erroneously named paragraph 109) of the Complaint and thus denies said
allegations.

1 115. Defendant does not possess enough information to admit or deny the allegation
2 in paragraph 115 (erroneously named paragraph 110) of the Complaint and thus denies said
3 allegations.

4 116. Defendant does not possess enough information to admit or deny the allegation
5 in paragraph 116 (erroneously named paragraph 111) of the Complaint and thus denies said
6 allegations.

7 117. Defendant does not possess enough information to admit or deny the allegation
8 in paragraph 117 (erroneously named paragraph 112) of the Complaint and thus denies said
9 allegations.

10 **PATTERN AND PRACTICE OF REGULATION X VIOLATIONS BE SELENE**

11 118. Defendant denies the allegations in paragraph 118 (erroneously named as
12 paragraph 113) of the Complaint.

13 119. Defendant does not possess enough information to admit or deny the allegation
14 in paragraph 119 (erroneously named paragraph 114) of the Complaint and thus denies said
15 allegations.

16 120. Defendant does not possess enough information to admit or deny the allegation
17 in paragraph 120 (erroneously named paragraph 115) of the Complaint and thus denies said
18 allegations.

19 **IMPACT AND DAMAGE TO PLAINTIFFS**

20 121. Defendant denies the allegations in paragraph 121 (erroneously named as
21 paragraph 116) of the Complaint.

22 122. Defendant denies the allegations in paragraph 122 (erroneously named as
23 paragraph 117) of the Complaint.

24 **Violations of 12 C.F.R. §1024.36(a)**

25 **Qualified Written Requests**

26 123. Paragraph 123 (erroneously named paragraph 119) does not require an admission
27 or denial.

28 124. Paragraph 124 (erroneously named paragraph 62) does not require an admission
or denial.

 125. Paragraph 125 (erroneously named paragraph 120) does not require an admission
or denial.

1 126. Paragraph 126 (erroneously named paragraph 121) does not require an admission
2 or denial.

3 127. Defendant does not possess enough information to admit or deny the allegation
4 in paragraph 127 (erroneously named paragraph 122) of the Complaint and thus denies said
5 allegations.

6 128. Defendant does not possess enough information to admit or deny the allegation
7 in paragraph 128 (erroneously named paragraph 123) of the Complaint and thus denies said
8 allegations.

9 129. Defendant does not possess enough information to admit or deny the allegation
10 in paragraph 129 (erroneously named paragraph 124) of the Complaint and thus denies said
11 allegations.

12 130. Defendant denies the allegations in paragraph 130 (erroneously named paragraph
13 125) of the Complaint.

14 131. Defendant does not possess enough information to admit or deny the allegation
15 in paragraph 131 (erroneously named paragraph 126) of the Complaint and thus denies said
16 allegations.

17 132. Defendant does not possess enough information to admit or deny the allegation
18 in paragraph 132 (erroneously named paragraph 127) of the Complaint and thus denies said
19 allegations.

20 133. Defendant does not possess enough information to admit or deny the allegation
21 in paragraph 133 (erroneously named paragraph 128) of the Complaint and thus denies said
22 allegations.

23 134. Defendant denies the allegation in paragraph 134 (erroneously named paragraph
24 129) of the Complaint.

25 135. Defendant denies the allegation in paragraph 135 (erroneously named paragraph
26 130) of the Complaint.

27 136. Defendant denies the allegation in paragraph 136 (erroneously named paragraph
28 131) of the Complaint.

 137. Defendant denies the allegation in paragraph 136 (erroneously named paragraph
132) of the Complaint.

Violations of 12 C.F.R. §1024.35(e)

Notice of Billing Error

138. Paragraph 137 (erroneously named paragraph 133) does not require an admission or denial.

139. Paragraph 138 (erroneously named paragraph 134) does not require an admission or denial.

140. Paragraph 139 (erroneously named paragraph 135) does not require an admission or denial.

141. Defendant does not possess enough information to admit or deny the allegation in paragraph 141 (erroneously named paragraph 136) of the Complaint and thus denies said allegations.

142. Defendant does not possess enough information to admit or deny the allegation in paragraph 142 (erroneously named paragraph 137) of the Complaint and thus denies said allegations.

143. Defendant does not possess enough information to admit or deny the allegation in paragraph 143 (erroneously named paragraph 138) of the Complaint and thus denies said allegations.

144. Defendant does not possess enough information to admit or deny the allegation in paragraph 144 (erroneously named paragraph 139) of the Complaint and thus denies said allegations.

145. Defendant does not possess enough information to admit or deny the allegation in paragraph 145 (erroneously named paragraph 140) of the Complaint and thus denies said allegations.

146. Defendant does not possess enough information to admit or deny the allegation in paragraph 146 (erroneously named paragraph 141) of the Complaint and thus denies said allegations.

147. Defendant denies the allegations in paragraph 147 (erroneously named paragraph 142) of the Complaint.

148. Defendant denies the allegations in paragraph 148 (erroneously named paragraph 143) of the Complaint.

1 149. Defendant denies the allegations in paragraph 149 (erroneously named paragraph
2 144) of the Complaint.

3 150. Defendant denies the allegations in paragraph 150 (erroneously named paragraph
4 145) of the Complaint.

5 151. Defendant denies the allegations in paragraph 151 (erroneously named paragraph
6 146) of the Complaint.

7 152. Defendant denies the allegations in paragraph 152 (erroneously named paragraph
8 147) of the Complaint.

9 153. Defendant denies the allegations in paragraph 153 (erroneously named paragraph
10 148) of the Complaint.

11 154. Defendant denies the allegations in paragraph 154 (erroneously named paragraph
12 149) of the Complaint.

13 155. Defendant denies the allegations in paragraph 155 (erroneously named paragraph
14 150) of the Complaint.

15 156. Defendant denies the allegations in paragraph 156 (erroneously named paragraph
16 151) of the Complaint.

17 157. Defendant denies the allegations in paragraph 157 (erroneously named paragraph
18 152) of the Complaint.

19 158. Defendant denies the allegations in paragraph 158 (erroneously named paragraph
20 153) of the Complaint.

21 **AFFIRMATIVE DEFENSES**

22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Failure to State a Claim)**

24 Plaintiffs' Complaint fails to state a claim against Defendant upon which relief can be
25 granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 **(Assumption of Risk)**

28 Plaintiffs, at all material times, calculated, knew and understood the risks inherent in the
situations, actions, omissions, and transactions upon which it now bases its various claims for
relief, and with such knowledge, Plaintiffs undertook and thereby assumed such risks and is
consequently barred from all recovery by such assumption of risk.

THIRD AFFIRMATIVE DEFENSE

(Equitable Doctrines)

Wilmington Trust alleges that the Plaintiff's claims are barred by the equitable doctrines of laches, unclean hands, and failure to do equity.

FOURTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

Wilmington Trust alleges that by reason of Plaintiff's acts and omissions, Plaintiff has waived his rights and is estopped from asserting its claims against Wilmington Trust.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Wilmington Trust alleges that the Plaintiff's claims are barred in whole or in part because of the Plaintiff's failure to take reasonable steps to mitigate the damages, if any, in this case.

SIXTH AFFIRMATIVE DEFENSE

(Breach of Contract/Waiver)

Plaintiffs breached the terms of the contract they attempt to enforce.

SEVENTH AFFIRMATIVE DEFENSE

(No Damage)

Plaintiffs have not suffered any damage.

EIGHTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

Wilmington Trust reserves the right to assert additional affirmative defenses in the event discovery or investigation indicate that additional affirmative defenses are applicable.

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PRAYER FOR RELIEF

Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiffs take nothing by way of their Complaint;
2. For attorney's fees;
3. For costs incurred, including post-judgment costs; and
4. For further relief deemed appropriate by this Court.

Dated: June 7, 2019

WRIGHT, FINLAY & ZAK, LLP

/s/ Christopher A. J. Swift, Esq.

Christopher Alan James Swift, Esq.

Nevada Bar No. 11291

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

Attorney for Defendant Selene Finance LP

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 7th day of June, 2019, a true and correct copy of this **ANSWER TO COMPLAINT** was transmitted electronically through the Court's e-filing electronic system to the attorney(s) associated with this case and/or served by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

Electronic notification will be sent to the following:

Michael C. Lehnars michaellehnars@yahoo.com

/s/ Faith Harris

An Employee of WRIGHT, FINLAY & ZAK, LLP